IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 87 OF 2002.

Mrs. Premlata Garg,
Proprietress of M/s. Kajuwalla,
having office at 5, Rizvi
Chambers, Near Municipal
Market, Panaji, Goa. ... Petitioner.

Versus

1. Assistant Director of Transport
and Registering Authority,
Panaji, Goa.
2. Director of Transport,
Government of Goa,
Panaji, Goa.
3. State of Goa through
Chief Secretary,
Secretariat, Panaji, Goa.
4. Motor Vehicles Inspector,
Directorate of Transport,
Panaji, Goa. ... Respondents.

Mr. V.A. Lawande, Advocate for the Petitioner.

Mr. P.A. Kamat, Additional Government Advocate for the Respondents.

Coram: A.S. AGUIAR AND
P.V. HARDAS, JJ.

Date: 20th March 2002.

ORAL JUDGMENT (PER AGUIAR, J.)

Heard the learned advocates. Issue Rule returnable forthwith.

2. The petitioner challenges the action of the respondent no. 1 in suspending the registration certificate and cancelling the fitness certificate and illegal detention of the motor vehicle, Pickup Telco GA-01-T-4850 on the ground that the Orders passed are without jurisdiction and passed arbitrarily without

following the principles of natural justice and affording a reasonable opportunity to the petitioner to answer to the show cause notice. Further the impugned action is actuated by mala fide.

3. The brief facts leading to the impugned action are: On 16th March 2001, petitioner purchased a motor vehicle which was registered as light goods vehicle. Petitioner obtained fitness certificate valid upto 15th March 2003, which the respondents had granted after being satisfied as to the fitness of the vehicle. On 28th March 2001, petitioner sought permission from respondent no. 1 to convert the open body as per the sketch submitted alongwith the application. The said application was granted and the petitioner allowed to convert the open body into a closed body as per the sketch. The petitioner, accordingly, converted the vehicle from open body to a closed one as per the sketch, Exhibit 'D'. The petitioner further obtained goods carriage permit from the Regional Transport Authority on 21st May 2001. Pursuant to letter dated 16th October 2001 from the Assistant Director of Transport, respondent no. 1, petitioner produced the said vehicle before the Assistant Director of Transport, respondent no. 1 alongwith relevant documents for inspection. However, the petitioner was not given a copy of the inspection report but,

surprisingly on 20th November 2001 petitioner was issued show cause notice by respondent no. 1 alleging that conversion made by the petitioner is not as per the provisions of the Motor Vehicles Act and the Rules framed thereunder and there was gross violation of the Rules and calling upon the petitioner to show cause as to why the vehicle should not be suspended/cancelled and penalty imposed.

4. Petitioner, at the time of receipt of the said notice in the office, was in Jaipur and, therefore, not able to reply the said notice immediately, but, however, on 31st December 2001, reply to the show cause notice, Exhibit 'F' was sent pointing out that the report of the inspection of the vehicle on 16th October 2001 was not given to the petitioner and that when the said show cause notice was issued, the report which was relied upon by the respondent no. 1 stating that the conversion of the vehicle was not as per the provisions of the Motor Vehicles Rules, was not furnished nor the show cause notice showed how and under what provisions of the Motor Vehicle Rules the conversion had been contravened.

5. On 7th February 2002, the Motor Vehicle Inspector filed a checking report of the vehicle and cancelled the fitness certificate under Section 56(4)

without following the procedure and without giving a hearing or notice to the petitioner. Thereafter, on 12th February 2002 the petitioner's vehicle was detained by report (Order) under Section 207 of the Motor Vehicles Act and the same is still in possession of the Police.

6. The main contention of the petitioner is that the show cause notice dated 20th November 2001, which alleges that the conversion of the vehicle is in violation of the Motor Vehicle Rules, in fact, does not disclose how the provisions of the Motor Vehicle Rules have been violated by the petitioner. Hence, the petitioner had not been able to give a proper reply to the show cause notice and the petitioner has thereby been deprived of the opportunity to answer the show cause notice.

7. It is the contention of the learned advocate appearing for the respondents that the petitioner had infringed the provisions under which the petitioner had been granted the fitness certificate and that, although the petitioner had obtained permission for converting the vehicle from an open body to a closed one, the petitioner had, in fact, made alterations which were not in accordance with the permission granted as per sketch at Exhibit 'D' at page 35, annexed to

application dated 28th March 2001.

8. It is seen from a perusal of the show cause notice that it does not inform the petitioner as to exactly how the deviations, if any, from the approved sketch, infringe the Motor Vehicle Rules. The petitioner was, thus, not in a position to answer the show cause notice. The reply dated 31st December 2001, Exhibit 'F' sent by petitioner is not a reply to the show cause notice but only a letter setting out few facts why the impugned action should not be taken.

9. We find much force in the contention of the learned advocate for the petitioner. Despite the receipt of said reply dated 31st December 2001, the Motor Vehicle Inspector issued the Checking Report, Exhibit 'G', dated 7th February 2002, cancelling the Fitness Certificate and pursuant thereto the Motor Vehicle Inspector passed Order dated 12th February 2002 detaining the vehicle under Section 207 of the Motor Vehicles Act, 1988. The action of the respondents in cancelling the Fitness Certificate and detaining the vehicle is in flagrant violation of the principles of natural justice deprives the petitioner of her source of livelihood, a situation which calls for immediate redressal.

10. In view of the above we quash and set aside the impugned Order dated 7th February 2002, Exhibit 'G' and Order dated 12th February 2002, Exhibit 'H' and direct the respondents to forthwith release the vehicle to the petitioner and return all the documents pertaining to it, to the petitioner. We, however, clarify that the respondents are at liberty to initiate action afresh against the petitioner according to law. Rule made absolute. Learned advocate for the respondents applies for stay of the Order for two weeks. Application rejected. Authenticated copy be supplied.

(A.S. AGUIAR)
JUDGE.

(P.V. HARDAS)
JUDGE.

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